

UGANDA / JUDGMENT

Patel v Rimmington (Civil Appeal No. 5 of 1952) [1952] EACA 55 (1 January 1952)

[1952] EACA 55

COURT

East African Court of Appeal

BEFORE

Bourke J, Nihill P, Worley VP

CASE / FILE NUMBER

Civil Appeal No. 5 of 1952

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COURT OF APPEAL FOR EASTERN AFRICA

Before SIR BARCLAY NIHILL (President), SIR NEWNHAM WORLEY (Vice-President) and BOURKE, J. (Kenya)

CHUNIBHAI MAGANLALBHAI PATEL, Appellant (Original Appellant)

CAPTAIN G. B. RIMMINGTON, Respondent (Original Respondent) Civil Appeal No. 5 of 1952

(Appeal from decision of H. M. Supreme Court of Kenya, Rudd, J.)

Landlord and tenant—Kenya Increase of Rent (Restriction) Ordinance, 1949—Nanyuki Rent Control Board-Failure to give party notice of hearing-Requirements of natural justice.

The respondent owned a plot of land and a godown at Nanyuki. He wished to rebuild and reconstruct the premises so as to provide facilities for three modern shops. The appellant, having been served with a valid notice to quit, was holding over as a statutory tenant. The respondent applied to the Board under section 16 (1) (e) (ii) of the Ordinance and his application was refused on the ground of no reasonable alternative accommodation. The respondent renewed his application under section 16 (1) \$(k)\$ and section 6 (4) and informed the appellant by letter that he had resubmitted his application to the Board. The appellant got no other notice and the Board proceeded to hear the application without informing either party. After deliberation the appellant was summoned before it and asked some questions and the secretary was instructed to convey the findings of the Board to the parties.

Held \$(10-4-52)\$.—(i) The appellant was not afforded a proper opportunity of presenting his case.

(ii) Such a failure amounted to a denial of natural justice.

(iii) In the absence of regulations pursuant to the power given by section 34 (2) relating to the manner in which Boards should conduct their business the Court gave directions as to the procedure for a hearing of the respondent's application.

Cases cited: Jamal Pirbhai and The Central Rent Control Board, S. C. C. A. 208 of 1951. Appeal allowed—respondent's application to Board directed to be heard with appropriate procedure laid down.

Salter for appellant.

Morgan for respondent.

JUDGMENT (delivered by SIR BARCLAY NIHILL (President)).—This is an appeal from a judgment of the Supreme Court of Kenya by which the learned Judge upheld a decision of the Nanyuki Rent Control Board granting the respondent an order for possession in respect of certain premises occupied by the appellant in the town of Nanyuki.

The main ground of the appeal is that the learned Judge in the Court below erred in not coming to the conclusion that the requirements of natural justice had been violated by the Board in that the appellant did not receive prior notice of the hearing of the respondent's application so that he did not have sufficient time to prepare his case.

In order to test this submission I will set out the facts. The respondent, Capt. Rimmington, is the owner of a plot of land in the main street, Nanyuki, on which stands a godown. It is his wish to rebuild and reconstruct the premises so as to provide facilities for three modern shops. The appellant was served with a valid notice to quit and is a statutory tenant holding over by reason of the Increase of Rent (Restriction) Ordinance, 1949. From the correspondence in the file supplied by the Board it appears that for years the respondent has been trying to recover possession of his plot and has been foiled in that endeavour for one reason or another. His last application but one was also unsuccessful. This was an application made under section 16 (1) (e) (ii) and after consideration by the Board he was refused on the ground that the alternative accommodation available was not in every way reasonably equivalent. (See the Board's letter to Capt. Rimmington dated 20th March, 1951.) In this letter it was stated, however, that the Board would be prepared to reconsider the application if Capt. Rimmington could show that it was his intention to rebuild or reconstruct the premises and could give an approximate date for the completion of the alterations. It is worth noting that, as regards this application, the appellant appears to have had notice and full opportunity of making his representations. A copy of the letter to Capt. Rimmington refusing to make an order was also sent to him. On receipt of the Board's letter of 20th March, 1951, the respondent, quite naturally regarded its second paragraph as a hint that his application might succeed if it was made under section 16 (1) (k) of the Ordinance.

He therefore lost little time in renewing his application on the grounds that he wanted to reconstruct and rebuild. I suspect that his knowledge of the Ordinance may have exceeded that of the Chairman of the Board for he did not limit his application to section 16 (1) \$(k)\$ of the Ordinance, but called in as well section 6 (4). This was a wise move, because in law and in fact the Nanyuki Board being a Rent Control Board other than the Central Board or the Coast Board has no jurisdiction to make an order for the recovery of possession of any premises except under the circumstances set out in section 6\$(4)\$. It is quite evident from the correspondence that all along the Nanyuki Rent Control Board has been under a misapprehension as to the limits of its jurisdiction, and I hope that one result of this case is that it may learn them.

Sub-section (4) of section 6 reads as follows: \$-\$

"(4) A Rent Control Board, other than the Central Board or the Coast Board, shall have power to do all the things which it is required or empowered to do by or under the provisions of this Ordinance, and in particular shall have all or any of the powers conferred upon the Central Board or the Coast Board by paragraphs \$(a)\$, \$(b)\$, \$(c)\$, \$(d)\$, \$(e)\$, \$(g)\$, \$(h)\$, \$(k)\$ and (1) of sub-section (1), and by sub-sections (2) and (3) of section 5 of this Ordinance, and shall also have power to make eviction order or orders for the recovery of premises where necessary to enable essential repairs to be effected or to enable the premises to be rebuilt or altered if such rebuilding or alterations will, in the opinion of the Board, be for the public benefit."

Any layman not exceptionally diligent, might, I think, be forgiven for failing to observe that the legislature deliberately omitted the enabling power set out in paragraph \$(f)\$ of section 5 (1), i.e. the power to make orders for recovery of possession. Nevertheless Boards, other than the Central or Coast Board, have by section 6 \$(4)\$ the power to make an eviction or possession order where it thinks it necessary for the execution of essential repairs or for rebuilding or alteration if such rebuilding or alterations are likely to be for the public benefit.

Now the respondent no doubt realizing this pleaded "public benefit" in his last application dated 11th May, 1951.

It is here that the trouble starts. The respondent did inform the appellant by a letter dated 14th May, 1951, that he had resubmitted his application to the Board as suggested in paragraph 2 of the Board's letter of 20th March. He did not, however, enclose a copy of his letter to the Board dated 11th May, so that the appellant can hardly be said to have received notice of the precise grounds on which the respondent was claiming "public benefit". This was all
the notice the appellant got, because the Board proceeded to hear the application on 21st May without, it would seem, informing either party.

According to the extract of the minutes of the Board's meeting, however, it appears that after the Board had deliberated for some time the appellant was summoned into its presence and asked some questions. He was asked and he admitted that he had applied for a plot on which to build but that he had not been allotted one. This statement was corroborated by the township overseer who told the Board that a plot had been recommended for the appellant's firm but that it had not

yet been surveyed. Thereupon it would seem that the Board decided to write urgently to the Commissioner for Lands with the hope of speeding up a settlement. The Minutes of the Board end with the following sentence: —

"The Secretary was instructed to convey the findings of the Board to Capt. Rimmington and Settlers Stores."

It is not possible from the minutes to deduce at precisely what stage the appellant withdrew from the meeting. Mr. Salter has submitted that it is not possible for us to assume that he even knew what was going on. I think it likely, however, that he did know because he had received notice that a fresh application had been put in by the respondent. The correspondence reveals so many approaches to the appellant by Capt. Rimmington that I can hardly believe it possible that the appellant thought he had merely been called to the Board that morning in order to answer some interesting questions as to the future plans of his firm in Nanyuki. I do think it quite likely, however, that when he withdrew from the Board he was under the impression that the Board would make no final order until it had received a reply from the Commissioner for Lands. As an appellate tribunal we are constantly referring to the difficulty we are placed in when considering Rent Board appeals because of the incompleteness of the record and the absence of any agreed statement of the facts. This is a case in point. We have nothing but what is headed an "Extract of the Minutes of Meeting, 21st May". All that I can say, on reading these, is that they contain nothing on which it would be at all safe to presume that the Board listened to the appellant's objections to the respondent's application. We are then left with the position that the appellant (a) was not told in advance that the application would be heard, and (b) that, in fact, he did not have a proper opportunity of presenting his case.

I thus have reached the conclusion, rather reluctantly because I appreciate that the respondent is a much tried man, that Mr. Salter is entitled to succeed in this appeal. The learned Judge in the Court below himself realized, for he stated the principle most clearly, that an order could not stand if it was shown that the party aggrieved had not been given an adequate opportunity of presenting his case. I refer to the following passage:-

"It is clearly essential that a party should be given an adequate opportunity to present his case and failure to afford such an opportunity will render a decision invalid."

Where, with respect, the learned Judge has, I think, misdirected himself, is in the circumstances of this case so far as they can be safely ascertained, it was not at all safe to conclude that in fact the appellant did have a reasonable opportunity to present his case adequately. The learned Judge also stated the law correctly when he said, "that in the absence of special rules of procedure the Boards are at liberty to make their own procedure provided that their decisions and procedure do not conflict with natural justice".

It is clear from the judgment that the learned Judge placed a great deal of store by the fact that when the appellant was present before the Board he did not ask for an adjournment if he was not ready to go on. It may be remembered that on the hearing of the previous application this is what the appellant had done. Because of the appellant's appearance at the Board when called on 21st May, and his omission to ask for an adjournment the learned Judge felt satisfied in finding that the appellant was not prejudiced by the shortness of notice.

I agree with Mr. Salter that the learned Judge seems to have applied the wrong test. Surely the right test is this. Given certain facts as to procedure or lack of procedure, did the procedure or lack of procedure observed or not observed conflict with the requirements of natural justice?

Now the facts which are beyond dispute are these:—

- (a) The appellant did not receive prior notice of the meeting held on 21st May.
- (b) He did not receive a copy of the respondent's application which **inter alia** set out the grounds on which the public benefit was being claimed.

On the above facts alone, I find the inference irresistible that prior to the Board making its decision on 21st May the appellant was not afforded a proper opportunity of presenting his case adequately. I would still be of this opinion even if one could safely assume, which one cannot, and which I think the learned Judge did assume, that the Board did in fact listen to his representations on 21st May, before coming to a decision.

I do not think, however, in fairness to the respondent, who has committed no fault or error, that we should merely set aside the order for possession and leave it at that. The respondent's application dated 11th May, 1951, should be regarded as still on the Board's files to be dealt with. When a date and time has been fixed for the hearing of the application, a notice of that date and time together with a copy of the respondent's application dated 11th May, 1951, should be served on the appellant. A similar notice as to the date and time should be served on the respondent and both he and the appellant should be invited to attend the meeting. The Board should listen to what each party has to say in the presence of each other before retiring for deliberations if necessary. It will be a matter entirely in the discretion of the Board to admit or refuse to admit advocates for the parties. If evidence is taken, it must be sworn evidence, and be taken in accordance with the normal rules regulating the reception of evidence. I think that in allowing this appeal our order should contain directions to the above effect addressed to the Chairman of the Nanyuki Rent Control Board. I would add that such detailed directions are only necessary because the Governor in Council has not yet seen fit to make regulations pursuant to the power given by section 34 (2) of the Ordinance in relation to the manner in which Rent Control Boards should conduct their business.

The appeal will be allowed with costs here and in the Supreme Court and an order as I have proposed will be drawn up.

SIR NEWNHAM WORLEY (Vice-President).—I have had the advantage of reading the judgment prepared by the learned President with which I am in complete agreement.

The Courts are empowered to examine the proceedings of quasi-judicial tribunals and to intervene when it appears that they have exceeded their jurisdiction or have not acted in accordance with natural justice. This expression may be, as Lord Sumner once remarked, "sadly lacking in precision" but one of its most widely recognized requirements is that any party likely to be adversely affected by the decision of the tribunal shall be informed of the matter in hand and given

a fair opportunity to state his own case. It is regrettable that the failure, as in the instant case, to observe these requirements causes unnecessary delay and expense to one of the parties concerned, but however sympathetic one may feel towards that party, the Court cannot abrogate its functions for there is no other check on the proceedings of these tribunals. While then I have every sympathy with the respondent who, through no fault of his own, is saddled with the costs of this appeal and subjected to further delay in regaining possession of his property, I cannot shut my eyes to the consideration that unless the Board's attention is now drawn to the essential features of the procedure to be followed, the mischief caused will in the long run be greater.

In fairness to the Board I should say that I do not hold them chiefly to blame: in my opinion the blame rests mainly on the Governor in Council to whom the legislature has delegated the power to make regulations and give directions for the purpose of giving effect to the Ordinance. No one wishes to enmesh the Rent Control Boards in an elaborate code of procedure, but I should have thought it quite feasible to devise a simple code of rules or directions which would indicate to the Boards the essentials of the procedure to be followed, and the pitfalls to be avoided. This Court has on more than one occasion drawn attention to the need for some such rules: I can only suppose that the high executive body charged with the power to make them is unaware of the expense and frustration suffered by applicants by lack of them.

In addition to the directions indicated in my Lord's judgment, it may be of assistance to the Board if I point out that their power to impose conditions conferred by section 5 (1) \$(k)\$ does not extend to orders made under section 6 (4) under which the only matter for their consideration is whether the intended rebuilding or alterations will be for the public benefit.

BOURKE, J. (Kenya).—I agree.

I would add that sitting upon the Bench which I normally occupy before which appeals from the determinations of Rent Control Boards are brought in the first instance, many of which do not find their way to this Court, I have been in a position to observe the time, costs and trouble that is expended upon argument and decision as to questions relating to procedure. I wish to take the opportunity of repeating here what I have already had occasion to say in the Supreme Court in *Jamal Pirbhai and The Central Rent Control Board*, C. A. No. 208 of 1951\$:—

"It seems probable that questions bearing upon procedure will continue to arise on appeal in rent control cases until regulations, as apparently envisaged under section 34 of the Ordinance, are made prescribing, 'the manner in which Rent Control Boards shall conduct their business, and the matters which shall be taken into account by Rent Control Boards in exercising their powers under (the) Ordinance.' These tribunals perform very important functions and, at any rate in the case of the Central and Coast Boards, they are accorded far wider powers than the similar tribunals in England, from whose decisions, moreover, there is no right of appeal. The Central and Coast Boards deal with claims which in England would be adjudicated upon the County Court or the High Court and which formerly, under the 1940 Ordinance, were decided by the Supreme Court or a Subordinate Court."

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